

§ 68.41

be marked for identification and shall constitute the offer of proof.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.41 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice. Provided, however, that the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

§ 68.42 In camera and protective orders.

(a) *Privileged communications.* Upon application of any person, the Administrative Law Judge may limit discovery or introduction of evidence or enter such protective or other orders as in the Judge's judgment may be consistent with the objective of protecting privileged communications and of protecting data and other material the disclosure of which would unreasonably prejudice a party, witness, or third party.

(b) *Classified or sensitive matter.* (1) Without limiting the discretion of the Administrative Law Judge to give effect to any other applicable privilege, it shall be proper for the Administrative Law Judge to limit discovery or introduction of evidence or to enter such protective or other orders as in the Judge's judgment may be consistent with the objective of preventing undue disclosure of classified or sensitive matter. When the Administrative Law Judge determines that information in documents containing sensitive matter should be made available the Judge may direct the producing party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

(2) If the Administrative Law Judge determines that this procedure is inadequate and that classified or otherwise sensitive matter must form part of the

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record in order to avoid prejudice to any party, the Judge may so advise the parties and provide an opportunity for arrangements to permit a party or a representative to have access to such matter. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure.

[Order No. 2203-99, 64 FR 7079, Feb. 12, 1999]

§ 68.43 Exhibits.

(a) *Identification.* All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) *Exchange of exhibits.* When written exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the Administrative Law Judge, unless the parties previously have been furnished with copies or the Administrative Law Judge directs otherwise. If the Administrative Law Judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing.

(c) *Substitution of copies for original exhibits.* The Administrative Law Judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991, and amended by Order No. 1635-92, 57 FR 57672, Dec. 7, 1992]

§ 68.44 Records in other proceedings.

In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless the Administrative Law Judge directs otherwise.

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